

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

05 - 20740 Case No. **CR - UNGARO - BENAGES**

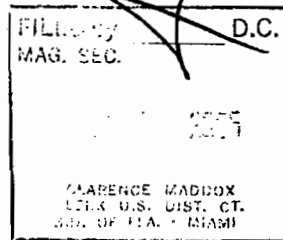
16 U.S.C. §§ 3372(a)(1), (a)(4)
16 U.S.C. §§ 3373(d)(1)(A), (B)
16 U.S.C. §§ 3372(d), 3373(d)(3)(A)(i)
18 U.S.C. § 1519
18 U.S.C. § 2

MAJESTRATE JUDGE
O'SULLIVAN

UNITED STATES OF AMERICA

v.

ANTONIO VIDAL PEGO,
a/k/a "TOÑO VIDAL",
and
FADILUR, S.A.,



Defendants. /

INDICTMENT

The Grand Jury charges:

Background

At all times relevant to this Indictment:

1. ANTONIO VIDAL PEGO, a/k/a "Toño VIDAL" ("VIDAL PEGO"), was a citizen of Spain. VIDAL PEGO was Secretary to the Board of Directors of and attorney-in-fact for FADILUR, S. A..
2. FADILUR, S.A. is a company incorporated in Uruguay, with an address in Montevideo, Uruguay.
3. THALASSA EXPORT COMPANY LTD. ("THALASSA") is a seafood trading company incorporated in, and with an address in, Mauritius.
4. Patagonian toothfish (*Dissostichus eleginoides*) and Antarctic toothfish (*Dissostichus*

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mawsonii), a/k/a "Chilean seabass", are slow-growing, deep sea species of fish found throughout large areas of the sub-Antarctic oceans. The Antarctic toothfish is found only in very southern latitudes and alongside the Antarctica icepack, and reaches a smaller maximum length than the Patagonian toothfish.

The Lacey Act Amendments of 1981

5. The Lacey Act Amendments of 1981, Title 16, United States Code, Section 3371 et seq. ("the Lacey Act"), makes it a felony offense for a person or corporation to knowingly make or submit any false record, account, or label for, or any false identification of, any fish which has been, or is intended to be imported from any foreign country. Title 16, United States Code, Sections 3372(d), 3373(d)(3)(A)(i).

6. The term "import" for purposes of the Lacey Act means to land on, bring into or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States. Title 16, United States Code, Section 3371(b).

7. The Lacey Act makes it a felony offense for a person or corporation to knowingly import fish, knowing that the fish was taken, possessed, transported, or sold in violation of, or in a manner unlawful under any law, treaty, or regulation. Title 16, United States Code, Sections 3372(a)(1), 3373(d)(1)(A).

8. The Lacey Act also makes it a felony offense for a person or corporation to knowingly engage in conduct, or attempt to engage in conduct, that involves the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase fish with a market value in excess of \$350, knowing that the fish was taken, possessed, transported, or sold in violation of, or in a manner

unlawful under, any U.S. law, treaty, or regulation. Title 16, United States Code, Sections 3372(a)(1), 3372(a)(4), 3373(d)(1)(B).

Laws, Treaties, and Regulations Governing Trade in Toothfish

9. The United States is a signatory and Contracting Party to the Convention on the Conservation of Antarctic Marine Living Resources, April 7, 1982, 33.3 U.S.T. 3476 (“Convention”). The objective of the Convention is the conservation of Antarctic marine living resources. Convention, Article II, paragraph 1.

10. Article VII of the Convention establishes a Commission for the Conservation of Antarctic Marine Living Resources (“CCAMLR”). The United States is a Member of CCAMLR. The functions of CCAMLR include the formulation and adoption of Conservation Measures necessary for the fulfilment of the objectives of the Convention. Convention, Article IX, paragraph 2.i. Conservation Measures are binding on all Members of CCAMLR except any Members that affirmatively reject the conservation measure within proscribed time frames. Convention, Article IX, paragraph 6.

11. In 2003, CCAMLR adopted Conservation Measure 10-05 which implements a catch documentation system for toothfish. The Measure expresses concern that “illegal, unregulated and unreported (IUU) fishing for *Dissostichus spp.* in the Convention Area threatens serious depletion of populations of *Dissostichus spp.*” The purpose of the documentation system is to track toothfish from harvest to country of final destination so that the countries participating in CCAMLR can determine if the fish was caught in a manner consistent with CCAMLR conservation measures.

12. Conservation Measure 10-05 requires that a *Dissostichus* Catch Document (“DCD”) accompany each shipment of toothfish. The DCD contains basic harvest, landing, and transportation

information that allows for the tracking of legally harvested toothfish from harvest to port of final destination. The documentation system requires that the DCD have a specific identification number consisting of a two letter code designating the issuing country, the last two digits of the year for which the form is issued, and a three-digit sequence number (beginning with 001) to denote the order in which catch document forms are issued. Conservation Measure 10-05, Annex A1; 50 C.F.R. § 300.101 (defining DCD as “the uniquely numbered catch documentation form approved by the Commission”). The system further requires that upon landing the catch, the master or authorized representative of a vessel shall confirm the landing by obtaining a signed and stamped certification on the DCD by a responsible official of the Port State of landing or free trade zone, who is acting under the direction of either the customs or fisheries authority of the Port State and is competent with regard to the validation of DCDs. Conservation Measure 10-05, Annex A5. Finally, the conservation scheme requires that for each shipment of toothfish to be exported from the country of landing, the exporter must obtain a signed and stamped validation of the DCD by a responsible official of the exporting State. *Id.*, at Annex A11.

13. The United States implemented the Convention, and the binding Conservation Measures issued pursuant to the Convention, through the Antarctic Marine Living Resources Convention Act (“Antarctic Act”), 16 U.S.C. § 2431 *et seq.* and the regulations promulgated thereunder.

14. The Antarctic Act makes it unlawful for any person or corporation to engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a Conservation Measure in force with respect to the United States pursuant to Article IX of the Convention. Title 16, United States Code, Section 2435(1).

15. The Antarctic Act also makes it unlawful for any person or corporation to violate any regulation promulgated under the Antarctic Act. Title 16, United States Code, Section 2435(2).

16. Title 50, Code of Federal Regulations, Part 300 implements “the fishery conservation and management measures provided for in the international treaties, conventions, or agreements specified in each subpart, as well as certain provisions of the Lacey Act Amendments of 1981.” 50 C.F.R. § 300.1. The regulations set forth in Part 300 and promulgated under The Antarctic Act provide, in relevant part, as follows:

- (a) It is unlawful for any person or corporation subject to the jurisdiction of the United States to fail to submit information, fail to timely submit information, or submit false or inaccurate information, with respect to any information required to be submitted, reported, communicated, or recorded pursuant to this part. 50 C.F.R. § 300.4(b). Sections 300.113(b) and 300.107(c)(5)(i) require that applications for preapproval for a shipment destined for the United States be received by the National Marine Fisheries Service (“NMFS”) at least 15 working days before the anticipated receipt, importation, or re-export.
- (b) It is unlawful for any person or corporation to engage in harvesting or other associated activities in violation of the provisions of the Convention or in violation of a conservation measure in force with respect to the United States under Article IX of the convention. 50 C.F.R. § 300.115(c).
- (c) It is unlawful for any person or corporation to import shipments of frozen *Dissostichus* without the preapproval required under 50 C.F.R. § 300.113 being issued. 50 C.F.R. § 300.115(t). Section 300.113(a)(1) requires preapproval from NMFS for each shipment of *Dissostichus* species.
- (d) It is unlawful for any person or corporation to provide incomplete or inaccurate information about the harvest, transshipment, landing, import or re-export of toothfish on any document required under Part 300, Subpart G (Antarctic Marine Living Resources, 50 C.F.R. §§ 300.100-300.117). 50 C.F.R. § 300.115(q).
- (e) It is unlawful for any person or corporation to violate or attempt to violate any provision of Part 300, Subpart G, or the AMLRCA. 50 C.F.R. § 300.115(p).

17. "Import" for the purposes of the Antarctic Act means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States. 16 U.S.C. § 2432(7); 50 C.F.R. § 300.2.

COUNT ONE

(False Labeling)

(16 U.S.C. §§ 3372(d), 3373(d)(3)(A)(i) and 18 U.S.C. § 2)

1. Paragraphs 1 through 17 of the Background section of this Indictment are incorporated herein by reference as if set forth in their entirety.

2. On or about July 29, 2004, at Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**ANTONIO VIDAL PEGO,
a/k/a "TOÑO VIDAL",
and
FADILUR S.A.,**

did knowingly make and submit a false record and account for fish that had been and was intended to be imported into the United States from Singapore; all in violation of Title 16, United States Code, Sections 3372(d), 3373(d)(3)(A)(i), and Title 18, United States Code, Section 2.

COUNT TWO

(Importing of Illegally Possessed Fish)

(16 U.S.C. §§ 3372(a)(1), 3373(d)(1)(A) and 18 U.S.C. § 2)

1. Paragraphs 1 through 17 of the Background section of this Indictment are incorporated herein by reference as if set forth in their entirety.

2. On or about May 25, 2004, at Miami-Dade County, in the Southern District of

Florida, and elsewhere, the defendants,

**ANTONIO VIDAL PEGO,
a/k/a "TOÑO VIDAL",
and
FADILUR S.A.,**

did knowingly import into the United States fish, that is, toothfish, knowing that the fish was transported in violation of, and in a manner unlawful under, the Antarctic Marine Living Resources Convention, 33.3 U.S.T. 3476, including Conservation Measure 10-05, and 50 C.F.R. §§ 300.4(b), 300.107(c)(1), and 300.115©, (p); all in violation of Title 16, United States Code, Sections 3372(a)(1), 3373(d)(1)(A), and Title 18, United States Code, Section 2.

COUNT THREE

(Attempted Sale of Illegally Possessed Fish)

(16 U.S.C. §§ 3372(a)(1), (a)(4), 3373(d)(1)(B) and 18 U.S.C. § 2)

1. Paragraphs 1 through 17 of the Background section of this Indictment are incorporated herein by reference as if set forth in their entirety.

2. On or about May 25, 2004, at Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**ANTONIO VIDAL PEGO,
a/k/a "TOÑO VIDAL",
and
FADILUR S.A.,**

did knowingly engage in conduct and attempt to engage in conduct that involved the sale or purchase of, the offer of sale or purchase of, or the intent to sell or purchase fish, that is toothfish, with a market value in excess of \$350, and did knowingly import, attempt to import, and transport said fish in foreign commerce, knowing that the fish was taken and transported in violation of, and in a manner unlawful under, the Antarctic Marine Living Resources Convention, 33.3 U.S.T. 3476,

including Conservation Measure 10-05, and 50 C.F.R. §§ 300.4(b), 300.107(c)(1), and 300.115(c), (p); all in violation of Title 16, United States Code, Sections 3372(a)(1), (a)(4), and 3373(d)(1)(B), and Title 18, United States Code, Section 2.

COUNT FOUR
(Obstruction of Justice)
(18 U.S.C. §§ 1519 and 2)

1. Paragraphs 1 through 17 of the Background section of this Indictment are incorporated herein by reference as if set forth in their entirety.

2. On or about July 29, 2004, at Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

ANTONIO VIDAL PEGO,
a/k/a “TOÑO VIDAL”,
and
FADILUR S.A.,

did knowingly alter, falsify, and make a false entry in a record and document, that is, a Survey Report dated April 22, 2004, purporting to reflect a toothfish cargo off-loaded at Singapore from the F/V CARRAN, with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of an agency of the United States, to wit: the Department of Commerce, National Oceanic & Atmospheric Administration, National Marine Fisheries Service, in violation of Title 18, United States Code, Sections 1519 and 2.

CRIMINAL FORFEITURE

Upon conviction of the violations alleged in Counts One, Two, or Three of this indictment, the defendants, **ANTONIO VIDAL PEGO, a/k/a “TOÑO VIDAL”, and FADILUR, S.A.,** shall forfeit to the United States all fish or wildlife imported, exported, transported, sold, received,

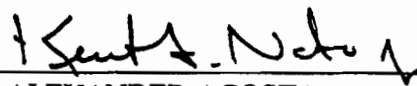
acquired, or purchased contrary to the provisions of Title 16, United States Code, Section 3372, or any regulation issued pursuant thereto, including but not limited to the following:

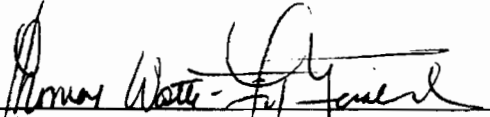
- a. Approximately 53,287.68 pounds of toothfish.
- b. \$314,397.30 in United States currency representing the sale proceeds of approximately 53,287.68 pounds of toothfish, sold pursuant to 15 Code of Federal Regulation, Section 904.505(d).

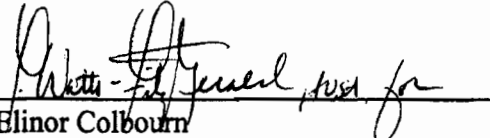
All pursuant to Title 28, United States Code, Section 2461, Title 16, United States Code, Section 3374(a)(1), 15 Code of Federal Regulation, Section 904.505(d), and the procedures outlined at Title 21, United States Code, Section 853.

A TRUE BILL


Foreperson


R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY


Thomas A. Watts-FitzGerald
Assistant United States Attorney


Elinor Colbourn
Senior Trial Attorney Environmental Crimes Section
U.S. Department of Justice